



April 28, 2011

By CM/ECF:

Michael E. Gans
Clerk of the Court
United States Court of Appeals
for the Eighth Circuit
Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 61302

Re: Tom Brady, et al., v. National Football League, et al., No. 11-1898

Dear Mr. Gans:

Earlier today, counsel for the *Brady* plaintiffs-appellees asked the Court to hold “in abeyance” until after noon tomorrow our clients’ request for a temporary stay of the district court’s injunction, pending the Eighth Circuit’s ruling on the stay pending appeal. In light of the nature and purpose of a temporary stay, holding the request in abeyance, of course, is equivalent to denying it.

At the same time they are asking this Court to defer (and thus deny) even temporary administrative relief to allow the Court an opportunity to process our stay request in an orderly manner, however, counsel for the *Brady* plaintiffs are demanding immediate compliance under explicit threat of contempt. In particular, counsel sent a letter to counsel for the NFL Defendants stating that they believe the NFL Defendants are in contempt if they do not immediately comply with the district court’s injunction. A copy of that letter is attached.

The *Brady* plaintiffs cannot have it both ways. They cannot threaten immediate contempt sanctions against the NFL Defendants, while at the same time asking this Court to delay addressing the NFL Defendants’ request for the temporary stay. Indeed, the plaintiffs’ threat of contempt only underscores the need for a temporary stay.

The Court’s rules provide a ready solution to prevent such a Catch-22 and to preserve the Court’s own ability to consider the stay request in an orderly manner: a temporary stay to preserve the status quo for the brief period it takes for the Court to consider a stay request. Eighth Circuit Rule 27A(b)(4). Since the *Brady* plaintiffs have indicated that they will respond by tomorrow at noon to the NFL’s request for a stay pending appeal and a request for an expedited appeal, the temporary stay in this case, even allowing for the reply brief allowed by the rules and this Court’s deliberations, is unlikely to last for any significant interval.

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In that short time, the *Brady* plaintiffs can make no possible claim of irreparable harm if the lockout that has already been in place for a month and a half continues. These same plaintiffs did not even seek a temporary restraining order. On the other hand, if a temporary stay is not granted, the NFL Defendants must either immediately initiate steps to comply with an injunction that this Court may stay as soon as it deliberates, or else face exposure to contempt sanctions. Complying with the injunction will require the NFL to coordinate with all 32 member clubs—who, according to the Brady plaintiffs, are competitors as well as fellow members of the League—to ensure a coordinated start to the next League year. It will be a complex process that requires time to coordinate. And this occurs at a time—during the NFL Draft, which begins this evening—when those at the League and the clubs responsible for player-related matters have substantial other responsibilities.

For these reasons, the NFL Defendants respectfully ask the Court to consider and grant their motion for a temporary stay as soon as the Court can address it to preserve the status quo while the Court considers the parties' briefing on the stay pending appeal and expedited appeal.

Respectfully submitted,

/s/Paul D. Clement

Paul D. Clement
Counsel for Appellants

Encl.

cc: (w/encl.)

All counsel of record
